

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THUY NGUYEN)	
Claimant)	
VS.)	
)	Docket No. 208,727
HYPLAINS BEEF, L.C.)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Claimant appeals from a December 2, 1997 Award entered by Special Administrative Law Judge William F. Morrissey.

APPEARANCES

Claimant appeared by her attorney, Chris A. Clements of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

ISSUES

The Special Administrative Law Judge denied claimant a work disability finding the circumstances surrounding claimant's termination from her employment with respondent required that the disability award be limited to claimant's percentage of functional impairment. The nature and extent of claimant's disability is the only issue before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Special Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Special Administrative Law Judge are found to be accurate and are adopted by the Appeals Board. The Appeals Board agrees that claimant was terminated by respondent for violations of its no call/no show attendance policy. The Appeals Board further agrees with the analysis of the record by the Special Administrative Law Judge regarding the conflicting testimony as to whether or not claimant called in to report her absences. The Appeals Board likewise finds that she did not. These violations of respondent's attendance rules invoke the policy considerations of Fouk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995) and Perez v. IBP, Inc., 16 Kan. App. 2d 277, 826 P.2d 520 (1991). The wage claimant was earning prior to her termination should be imputed and a work disability award is denied. The Appeals Board adopts the functional impairment percentage finding in the Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey dated December 2, 1997 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Office of Administrative Law Judge, Garden City, KS
Philip S. Harness, Director